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FILED BY FAX

ALAMEDA COUNTY

November 26, 2018

CLERK OF
THE SUPERIOR COURT
By Dajuana Turner, Deputy

CASE NUMBER:

RG16842777

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY

JOSE MARTINEZ, on behalf of himself and
all others similarly situated,

Case No.: RG16842777

ASSIGNED FOR ALL PURPOSES TO:
JUDGE BRAD SELIGMAN
DEPARTMENT 23

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF, DAMAGES,
RESTITUTION, AND CIVIL
PENALTIES**

DEMAND FOR JURY TRIAL

Complaint Filed: December 16, 2016

Plaintiff,
v.
GORDO TAQUERIA #1, INC., a California
Corporation dba Gordo Taqueria; GORDO
TAQUERIA #2, INC., a California
Corporation dba Gordo Taqueria; GORDO
TAQUERIA #3, INC., a California
Corporation dba Gordo Taqueria; GORDO
TAQUERIA #5, INC., a California
Corporation dba Gordo Taqueria; GORDO
TAQUERIA #6, INC., a California
Corporation dba Gordo Taqueria; DICK
YAMAGAMI, an individual dba Gordo
Taqueria; MANUEL HERNANDEZ, an
individual dba Gordo Taqueria; and DOES
ONE through TEN inclusive,

Defendants.

Case No.: RG16842777

SECOND AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF, DAMAGES, RESTITUTION, AND CIVIL PENALTIES

1 Plaintiff JOSE MARTINEZ (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
5 class and representative action for wage and hour claims on behalf of himself and all other
6 similarly-situated non-exempt hourly employees, including prep cooks, line cooks, burrito-makers,
7 and dishwashers, who are paid on an hourly basis (collectively “Class Members” or the “Class”)
8 currently or formerly employed in California by Defendants GORDO TAQUERIA #1, INC., a
9 California corporation dba Gordo Taqueria (Clement Street, San Francisco); GORDO TAQUERIA
10 #2, INC., a California corporation dba Gordo Taqueria (9th Avenue, San Francisco); GORDO
11 TAQUERIA #3, INC., a California corporation dba Gordo Taqueria (Solano Avenue, Albany);
12 GORDO TAQUERIA #5, INC., a California corporation dba Gordo Taqueria (College Avenue,
13 Berkeley); GORDO TAQUERIA #6, INC., a California corporation dba Gordo Taqueria (Geary
14 Boulevard, San Francisco); DICK YAMAGAMI, an individual dba Gordo Taqueria (Telegraph
15 Avenue, Berkeley); MANUEL HERNANDEZ, an individual dba Gordo Taqueria (Telegraph
16 Avenue, Berkeley); and DOES 1-10 inclusive (collectively, “Defendants”).

17 2. Defendants own and operate, and at all times relevant to this Complaint owned and
18 operated, various Mexican restaurants, that is *taquerias*, in Alameda and San Francisco counties
19 under the fictitious business name of Gordo Taqueria. Defendants are, and at all times relevant to
20 this Complaint were, employers covered by the California Labor Code and Industrial Welfare
21 Commission Wage Order 5 (“Wage Order 5”).

22 3. During all time periods relevant to this Complaint, commencing at least four (4)
23 years prior to the filing of this action on December 16, 2016 and continuing on through the present
24 (the “Class Period”), Defendants have had a practice of distributing Plaintiff’s and Class Members’
25 employee tips at the end of the calendar year, or periodically a few times throughout the calendar
26 year. In addition, Defendants have had a practice of requiring Plaintiff and Class Members to pool
27 all tips earned throughout the year and then unlawfully dividing the pooled tips in an arbitrary
28 fashion. In addition, Defendants have regularly failed to distribute all tips earned to only

1 employees in the “chain of service” and have had a practice of unlawfully using tips to pay for
2 company expenses.

3 4. Defendants regularly require and, at times relevant to the Complaint, required
4 Plaintiff and Class Members to work over eight (8) hours in a day and/or over forty (40) hours in a
5 week and/or seven consecutive days. Until approximately February 2015, Defendants failed to pay
6 Plaintiff and Class Members the overtime and double-time rates required by California law.
7 Further, during the Class Period, up to and including the present, Defendants have assigned Class
8 Members to work in different locations, and have paid Class Members in separate checks, in
9 order to avoid overtime compensation requirements.

10 5. During the Class Period, up to and including the present, Defendants have failed to
11 provide Plaintiff and Class Members who work over ten (10) hours in a day with a second off-duty,
12 uninterrupted 30 minute meal period. Further, Defendants regularly fail, and at times relevant to
13 the Complaint, failed to authorize and permit Plaintiff and Class Members to take off-duty,
14 uninterrupted 10-minute rest periods. Moreover, Defendants regularly fail, and at times relevant to
15 the Complaint, failed to provide Plaintiffs and Class Members with the premium wages due for the
16 missed meal period and rest periods.

17 6. Defendants regularly interfere, and at times relevant to the Complaint, have
18 interfered with Plaintiff's and Class Members' ability to take a sick day; similarly, Defendants fail
19 and, at time relevant to the Complaint, have failed to provide Plaintiff and Class Members with
20 paid sick leave as required by California law.

21 7. Defendants have committed additional wage and hour violations, including, but not
22 limited to, (a) failure to pay all wages due upon separation from employment; (b) failure to furnish
23 accurate wage statements; and (c) failure to maintain required payroll records showing the actual
24 hours worked each day by Plaintiff and Class Members.

25 8. This class action asserts violations of California's Labor Code, Wage Order 5,
26 Business and Professions Code, and Private Attorneys General Act, as well as a claim for
27 conversion, arising from Defendants' unlawful conduct, including but not limited to: (a) failure to
28 timely and properly distribute tips; (b) failure to pay overtime, and/or double-time wages for all

overtime hours worked; (c) failure to pay all wages, including tips and overtime pay, due upon separation from employment; (d) failure to provide a second 30-minute meal period on days in which more than 10 hours are worked; (e) failure to authorize and permit 10 -minute rest periods; (f) interference with the right to take sick days and failure to pay sick leave; (g) failure to furnish accurate wage statements; and (h) failure to maintain required payroll records. Plaintiff, on behalf of himself and those similarly situated, seeks back wages, waiting time and other civil penalties, compensatory damages, restitution, interest thereon, injunctive and declaratory relief, and attorneys' fees and costs.

II. JURISDICTION AND VENUE

9. This court has jurisdiction over the claims alleged herein pursuant to California Labor Code § 1194 and the California Constitution, Article VI, § 10. Jurisdiction is further proper in this court because Plaintiff's claims all arise under the laws of the State of California, and all parties to this action are California residents.

10. Venue is proper in the County of Alameda, pursuant to California Code of Civil Procedure § 395.5. Plaintiff was employed by and performed work for Defendants in Alameda County, California, during the time period relevant to this Complaint. Defendants maintain offices, transact business, and have agents in Alameda County, and Defendants are otherwise within this Court's jurisdiction for purposes of service of process.

III. PARTIES

11. Plaintiff Jose Martinez, at all times relevant to this Complaint, resided in Contra Costa County, California. Plaintiff was employed as a dishwasher and prep cook by Defendants from approximately December 2013 to December 2015. Plaintiff worked at Defendants' College Avenue, Berkeley location.

12. Plaintiff is informed and believes and thereon alleges that Gordo Taqueria is an integrated enterprise operating a chain of fast food Mexican restaurants, including but not limited to:

a. Defendant Gordo Taqueria #1, Inc., a California corporation, located at 2252 Clement Street, San Francisco, California, 94121 (“Gordo Taqueria #1”).

- b. Defendant Gordo Taqueria #2, Inc., a California corporation, located at 1239 9th Avenue, San Francisco, California, 94122 (“Gordo Taqueria #2”);
- c. Defendant Gordo Taqueria #3, Inc., a California corporation, located at 1423 Solano Avenue, Albany, California, 94706 (“Gordo Taqueria #3”);
- d. Defendant Gordo Taqueria #5, Inc., a California corporation, located at 2989 College Avenue, Berkeley, California, 94705 (“Gordo Taqueria #5”);
- e. Defendant Gordo Taqueria #6, Inc., a California corporation, located at 5450 Geary Boulevard, San Francisco, California, 94121 (“Gordo Taqueria #6”);
- f. Defendants Dick Yamagami and Manuel Hernandez, doing business as Gordo Taqueria #7, located at 2404 Telegraph Avenue, Berkeley, California, 94720 (Gordo Taqueria #7).

The entities and individuals named above in paragraphs (a) through (f) above are collectively referred to as "Gordo Taqueria."

13. Upon information and belief, Defendant Yamagami, an individual, resides in San Francisco County, California. Defendant Yamagami is the CEO, President, Incorporator, and Agent of Service for Gordo Taqueria #1, Gordo Taqueria #2, Gordo Taqueria #3, Gordo Taqueria #5, and Gordo Taqueria #6. Defendant Yamagami is also the CFO for Gordo Taqueria #2 and Gordo Taqueria #6, and refers to himself as a “major stockholder” for Gordo Taqueria #1 and Gordo Taqueria #2. He was the registered co-owner of the fictitious business name Gordo Taqueria #7 from 2010 to 2015, when the registration expired. Defendant Yamagami controls and is intimately involved in the day-to-day operations of Gordo Taqueria and both determined and instituted the unlawful wage and hour practices alleged herein.

14. Upon information and belief, Defendant Hernandez, an individual, resides in Contra Costa County, California. Defendant Hernandez is the Secretary for Gordo Taqueria #1, Gordo Taqueria #2, Gordo Taqueria #3, Gordo Taqueria #5, and Gordo Taqueria #6. Defendant Hernandez is also the CFO for Gordo Taqueria #1, Gordo Taqueria #3, and Gordo Taqueria #5. He was the registered co-owner of the fictitious business name Gordo Taqueria #7 from 2010 to 2015, when the registration expired. Defendant Hernandez controls and is intimately involved in the day-

1 to-day operations of Gordo Taqueria and both determined and instituted the unlawful wage and
2 hour practices alleged herein.

3 15. Plaintiff is informed and believes and thereon alleges that Defendants have been
4 systematically and continuously doing business in California. Defendants are, and at all times
5 relevant to this Complaint were, employers covered by the California Labor Code and Wage Order
6 5.

7 16. Plaintiff is informed and believes that Defendants are joint employers, operating as
8 an integrated enterprise, and/or are the alter egos of one another.

9 17. Defendants DOES 1-10 are persons or entities whose true names and capacities are
10 presently unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff is
11 informed and believes, and on that basis alleges, that each of the fictitiously-named Defendants
12 perpetrated some or all of the wrongful acts alleged herein, is responsible in some manner for the
13 matters alleged herein, and is jointly and severally liable to Plaintiff. Plaintiff will amend this
14 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.
15 Plaintiff is further informed and believes, and alleges thereon, that at all relevant times, DOE
16 Defendants have held executive positions with Defendants, and/or have acted on behalf of
17 Defendants by exercising decision-making responsibility for and by establishing unlawful wage and
18 hour practices or policies for Defendants. Plaintiff is informed and believes, and on that basis
19 alleges, that at all times relevant to this Complaint, DOE Defendants, and each of them, acted as an
20 employer of Plaintiff and the Class Members, defined below, within the definition of the California
21 Labor Code and Wage Order 5. Plaintiff is informed and believes, and on that basis alleges, that
22 DOE Defendants are joint employers, working as a joint enterprise with, and are the alter egos of
23 Defendants.

24 **IV. FACTUAL ALLEGATIONS**

25 18. Plaintiff and Class Members are current and former non-exempt hourly employees,
26 including prep cooks, line cooks, burrito-makers, and dishwashers, within the meaning of the
27 California Labor Code, the implementing rules and regulations of the Wage Order 5, and/or other
28 applicable law.

1 19. During the Class Period, Defendants violated, and continue to violate, Labor Code §
2 351 by: (1) failing to distribute tips to employees for up to a year; (2) distributing pooled tips to
3 employees who are not in the “chain of service”; (3) failing to distribute all earned tips to
4 employees, by, for example, using tips to pay for business expenses, such as annual company
5 parties; and (4) failing to keep accurate records of all tips received.

6 20. During the Class Period, Defendants violated California’s wage and hour laws by
7 having a policy and practice of requiring Plaintiff and Class Members to work over eight (8) hours
8 – and sometimes even over twelve (12) hours – in a day and/or forty (40) hours in a workweek or a
9 seventh consecutive day and failing to pay Plaintiffs and Class Members the required overtime
10 premium rate of pay for all hours worked over eight (8) hours in a day and/or forty (40) hours in
11 a workweek, as well as the first eight (8) hours worked on the seventh consecutive day of work in
12 a workweek and the required double-time premium rate of pay for all hours worked beyond
13 twelve (12) hours in a workday and/or beyond the first eight (8) hours worked on the seventh
14 consecutive day of work in a workweek. Furthermore, during the Class Period, Defendants have
15 had a policy and practice of scheduling Class Members to work at different Gordo Taqueria
16 locations in a pay period and providing employees with separate checks for each location worked to
17 avoid the accrual of weekly overtime and/or doubletime hours and the payment of the required
18 overtime and/or doubletime compensation.

19 21. During the Class Period, Defendants have had a policy and practice of failing to
20 provide Plaintiff and Class Members with a second off-duty, uninterrupted meal period on days in
21 which Plaintiff and Class Members work more than ten (10) hours in violation of California law.
22 Further, Defendants have failed to inform Plaintiff and Class Members of their right to these second
23 duty-free, uninterrupted meal periods. Moreover, Defendants have failed to pay Plaintiff and Class
24 Members the required premium pay for days in which second meal periods were not provided.

25 22. During the Class Period, Defendants have had a policy and practice of failing to
26 permit and authorize Plaintiff and Class Members with 10-minute off-duty, uninterrupted rest
27 breaks for every four (4) hours or major faction thereof worked in violation of California law.
28 Defendants have failed to inform Plaintiff and Class Members of their right to these off-duty,

1 uninterrupted rest periods. Moreover, Defendants have failed to pay Plaintiff and Class Members
2 the required premium pay for days in which rest periods were neither permitted nor authorized.

3 23. During the Class Period, Defendants have had a policy and practice of interfering
4 with Plaintiff and Class Members' ability to take a sick day, failing to provide notice to Plaintiff
5 and Class Members of their right to paid sick leave – much less provide them with paid sick
6 leave, despite Plaintiff and Class Members meeting the various requirements (i.e. length of
7 employment, temporal, geographic, not covered by a collective bargaining agreement, etc.) for
8 paid sick days under state law. Rather Defendants have required Plaintiff and Class Members to
9 find replacement workers when they are sick and have not compensated them for time taken off
10 due to illness or medical treatment and/or providing care of assistance to a covered family
11 member, in violation of state law.

12 24. During the Class Period, Defendants have had a policy and practice of not
13 compensating Plaintiff and Class Members for all earned wages, including wages for overtime and
14 gratuities, due either upon termination or within 72 hours of an unnoticed quit.

15 25. During the Class Period, Defendants have had a policy and practice of failing to
16 furnish Plaintiff and Class Members with accurate wage statements, as their wage statements do
17 not accurately reflect all hours worked or the applicable wage rates paid, and therefore do not
18 accurately reflect the gross and net wages earned.

19 26. During the Class Period, Defendants have had a policy and practice of not keeping
20 basic required payroll and time records showing the actual hours worked or amount of tips earned
21 each day by Plaintiff and Class Members.

22 27. Plaintiff alleges that all of these acts and failures to act alleged herein were duly
23 performed by and attributable to all Defendants, each acting as a successor, agent, alter ego,
24 employee, indirect employer, integrated enterprise and/or under the direction and control of the
25 others, except as specifically alleged otherwise. Said acts and failures to act were within the
26 scope of such agency and/or employment, and each Defendant participated in, approved and/or
27 ratified the unlawful acts and omissions by the other Defendants complained of herein.

28 Whenever and wherever reference is made in this Complaint to any act by a Defendant or

1 Defendants, such allegations and reference shall also be deemed to mean the acts and failures to
2 act of each Defendant acting individually, jointly, and/or severally.

3 28. Plaintiffs allege that Defendants Yamagami and Hernandez are joint owners,
4 directors, officers, and/or managing agents of each Gordo Taqueria location. Defendants
5 Yamagami and Hernandez are actively involved in the day-to-day management of the restaurants
6 and exercise tight control over their operations. As such, they are personally liable for the Wage
7 Order and Labor Code violations cited herein under Labor Code § 558.1.

8 **V. CLASS ALLEGATIONS**

9 29. Plaintiff brings this action individually and on behalf of all other similarly-situated
10 non-exempt hourly employees, including prep cooks, line cooks, burrito-makers, and dishwashers,
11 who are currently employed or were formerly employed by Defendants in California at any time
12 during the Class Period.

13 30. Plaintiff's claims are brought and may properly be maintained as a class action
14 under California Code of Civil Procedure § 382, because there is a well-defined community of
15 interest among the Class with respect to the claims asserted herein and the proposed Class is easily
16 ascertainable.

17 31. Ascertainability and Numerosity: The members of the Class are sufficiently
18 numerous that joinder of all members is impracticable. During the Class Period, Defendants have
19 employed Class Members to work at their six (6) restaurant locations in Alameda County and San
20 Francisco County. Plaintiff is informed and believes, and on that basis alleges, that Defendants
21 have employed approximately 140 Class Members at their restaurant locations during the Class
22 Period, and that current employees are members of the Class, as defined herein. In addition, the
23 Class includes former employees employed by Defendants during the Class Period and unknown
24 future employees who will become employed by Defendants as Class Members prior to Class
25 certification. The names and addresses of the Class Members are available from Defendants.
26 Notice can be provided to the Class Members via first class mail using techniques and a form of
27 notice similar to those customarily used in class action lawsuits of this nature.

28 32. Commonality: There are questions of law and fact common to the Class that are

1 answerable on a common basis and these questions predominate over individual questions. The
2 questions of law and fact common to the Class include, without limitation:

- 3 a. Whether Defendants have had a policy and practice of failing to distribute gratuities
4 to employees by no later than the next regular payday in violation of Labor Code §
5 351;
- 6 b. Whether Defendants have had a policy and practice of distributing pooled tips to
7 employees who are not in the “chain of service”, in violation of Labor Code § 351;
- 8 c. Whether Defendants have had a policy and practice of improperly using pooled tips
9 to pay for business expenses, in violation of Labor Code § 351;
- 10 d. Whether Defendants have had a policy and practice of failing to pay Plaintiff and
11 Class Members overtime compensation for all hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a workweek or on the first eight (8) hours of a
13 seventh consecutive workday and double-time compensation for all hours worked
14 in excess of twelve (12) in a day or after eight (8) hours on the seventh
15 consecutive workday, in violation of Labor Code § 510 and Wage Order 5 §§ 3, 5;
- 16 e. Whether Defendants have had a policy and practice of only providing one meal
17 period per workday even when requiring Plaintiff and Class Members to work
18 more than ten (10) hours in a day, thereby failing to provide the Plaintiff and Class
19 Members with a second meal period, in violation of California’s Wage Order 5 §
20 11 and Labor Code §§ 226.7 and 512;
- 21 f. Whether Defendants have had a policy and practice of not authorizing or
22 permitting Plaintiff and Class Members to take 10-minute rest periods for every
23 four (4) hours or major fraction thereof, in violation of Wage Order 5 § 12 and
24 Labor Code §§ 226.7;
- 25 g. Whether Defendants have had a policy and practice of interfering with Plaintiff
26 and Class Members’ ability to take a sick day, failing to provide notice to Plaintiff
27 and Class Members of their right to paid sick leave – much less provide them with

paid sick leave, for paid sick days in violation of Labor Code §§ 246 and 248.5;

- h. Whether Defendants are liable for waiting time penalties to members of the Class, pursuant to Labor Code § 203, for failure to comply with Labor Code §§ 201 and 202;
- i. Whether Defendants are liable for penalties due to their failure to maintain payroll records showing daily hours worked and wages paid pursuant to Labor Code § 1174(d);
- j. Whether Defendants are liable for penalties due to their failure to provide accurate wage statements pursuant to Labor Code 226(a);
- k. Whether Class Members have lost money or property as a result of Defendants' violations of Business and Professions Code §§ 17200, *et seq.*

33. Typicality: Plaintiff's claims are typical of the claims of the Class he seeks to represent. As set forth herein, Defendants' common course of conduct caused Plaintiff and similarly situated Class Members employed by Defendants the same or similar injuries and damages. Plaintiff's claims are thereby representative of and coextensive with the claims of the Class.

34. Adequacy: Plaintiff will fairly and adequately represent the interests of the Class he seeks to represent. Plaintiff is a member of the Class he seeks to represent, does not have any conflicts of interest with the proposed Class, will prosecute the case vigorously on behalf of the Class, and has already devoted time and resources to the initial investigation of these claims. Plaintiff's counsel are competent and experienced in litigating employment actions, including wage and hour class actions.

35. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes that Class Members are unwilling to bring individual lawsuits for fear of retaliation by Defendants. Because the damages suffered by certain individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class Members to pursue their claims separately. Class action treatment will allow those similarly

1 situated persons to litigate their claims in the manner that is most efficient and economical for the
2 parties and the judicial system. Class action treatment will also avoid inconsistent outcomes
3 because the same issues can be adjudicated in the same manner for all Members of the Class.

4 **INTEGRATED ENTERPRISE ALLEGATIONS**

5 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, and continuing to the present, Defendants have operated, and currently cooperate, as a
7 single integrated business enterprise and should therefore be treated as a single employer. Though
8 such Defendants have multiple corporate, entity, and individual personalities, there is but one
9 enterprise and this enterprise has been so handled that it should respond as a whole for the acts
10 committed by Defendants, as alleged herein.

11 37. Plaintiff alleges that all Gordo Taqueria locations share the same employer
12 policies and practices, including, but not limited to, the unlawful policies and practices set forth
13 herein, as well as payroll and accounting responsibilities, management and supervision. All
14 Gordo Taqueria locations use and assign employees interchangeably. For example, Plaintiff
15 worked with Class Members at Defendant's College Avenue, Berkeley location who had been
16 sent to work at other Gordo Taqueria locations. Further, all Gordo Taqueria locations share the
17 same website, menu, logos, marketing, and social media sites. They also hold one company
18 holiday party for all employees, regardless of the location at which they work.

19 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, and continuing to the present, each corporation, individual, and entity has been and is
21 merely an instrument and conduit for the others in the prosecution of a single business venture.
22 There is such a unity of interests and ownership among these Defendants that the separate
23 personalities of the corporations, individuals, and entities no longer exist.

24 39. If the acts of Defendants are treated as those of one Defendant alone, an
25 inequitable result will follow: That Defendant may have insufficient assets to respond to the
26 ultimate award of damages, attorneys' fees, and costs entered in this case.

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ALTER EGO ALLEGATIONS

40. Plaintiff is informed and believes, and thereon alleges, that Defendants Yamagami and Hernandez exercise complete control over Gordo Taqueria locations. Defendant Yamagami is the CEO, President, Incorporator, and Agent of Service for Gordo Taqueria #1, Gordo Taqueria #2, Gordo Taqueria #3, Gordo Taqueria #5, Gordo Taqueria #6 and the registered co-owner of Gordo Taqueria #7. Defendant Yamagami is also the CFO for Gordo Taqueria #2 and Gordo Taqueria #6, and has held himself out as a “major stockholder” for Gordo Taqueria #1 and Gordo Taqueria #2. Defendant Hernandez is the Secretary for Gordo Taqueria #1, Gordo Taqueria #2, Gordo Taqueria #3, Gordo Taqueria #5, Gordo Taqueria #6, the CFO for Gordo Taqueria #1, Gordo Taqueria #3, and Gordo Taqueria #5, and the registered co-owner of Gordo Taqueria #7. Further, Defendants Yamagami and Hernandez are the reputed owners of 5450 Geary Boulevard, San Francisco, California, the location of Gordo Taqueria #6.

41. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, and continuing to the present, there existed, and currently exists, a unity of interest and ownership between Defendants Yamagami and Hernandez, on the one hand, and Gordo Taqueria, on the other hand, such that the requisite degree of individuality and separateness among these Defendants, and each of them, have ceased, and that Defendants Yamagami and Hernandez are the alter egos of Gordo Taqueria, and Gordo Taqueria restaurants are the alter egos of one another. Plaintiff is informed and believes, and thereon alleges:

- a. Defendants Yamagami and Hernandez have completely controlled, dominated, managed, and operated Gordo Taqueria for their sole and exclusive benefit;
- b. Defendants Yamagami and Hernandez have failed to maintain the requisite degree of separateness with Gordo Taqueria;
- c. Defendants Yamagami and Hernandez, at all times herein mentioned, have controlled and operated Gordo Taqueria as a device to avoid individual, agency, and respondeat superior liability; and

d. Defendants Yamagami and Hernandez have held themselves out as the owners of Gordo Taqueria.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VII. FIRST CHOICE OF ACTION VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT

(Labor Code §§ 2698 *et seq.*)

(On Behalf of Plaintiff and the Class Against All Defendants)

42. Plaintiff realleges and incorporates the foregoing allegations as though set forth herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

43. On a representative and/or a class action basis, Plaintiff seeks recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698 *et seq.*

44. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself and other current or former employees as a result of an employer’s violations of the Labor Code, including but not limited to violations alleged herein, including Labor Code §§ 201-203, 226, 351, 510, 1174, and 1194.

45. In addition to the other Labor Code and Wage Order 5 violations alleged herein, Defendants have violated Labor Code § 351, which establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees and must be distributed to employees no later than the next regular payday (for credit card tips). Labor Code § 350(e) defines the term “gratuity” as including any money that has been paid or given or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink or articles sold or served to such patron.

46. Labor Code § 351 expressly prohibits employers and their agents from collecting, taking or receiving any portion of a gratuity.

47. Defendants required Plaintiff and Class Members to pool all tips earned, including cash and credit card tips. Defendants then withheld these mandatorily pooled tips from Plaintiff and Class Members for up to a year in violation of Labor Code § 351. Plaintiff and Class Members only received a portion of their tips owed without a breakdown or an explanation.

1 Defendants also used Plaintiff's and Class Members' mandatorily pooled tips to pay for business
2 expenses, including annual company-wide parties. By helping themselves to Plaintiff and Class
3 Members' tips, Defendants have failed to distribute tips to only employees in the "chain of
4 service" and have failed to pay Plaintiff and Class Members all gratuities owed.

5 48. In addition to the other Labor Code and Wage Order 5 violations alleged herein,
6 Defendants have violated Labor Code §§ 246 and 248.5 Defendants have had a policy and practice
7 of interfering with Plaintiff and Class Members' ability to take a sick day, failing to provide notice
8 to Plaintiff and Class Members of their right to paid sick leave – much less provide them with
9 paid sick leave, despite Plaintiff and Class Members meeting the various requirements (i.e.
10 length of employment, temporal, geographic, not covered by a collective bargaining agreement,
11 etc.) for paid sick days under state law. Rather Defendants have required Plaintiff and Class
12 Members to find replacement workers when they are sick and have not compensated them for
13 time taken off due to illness or medical treatment and/or providing care of assistance to a covered
14 family member, in violation of state law.

15 49. Labor Code § 246 requires that an employer provide paid sick leave to all
16 employees who, on or after July 1, 2015, have worked thirty (30) or more calendar days within a
17 year since their date of hire. Specifically Labor Code § 246(b)(1) states: "an employee shall
18 accrue sick days at a rate of not less than one hour per every thirty (30) hours worked, beginning
19 at the commencement of employment or operative date of this article, whichever is later...." The
20 employee is entitled to use accrued sick days beginning after ninety (90) days of employment.

21 50. During the Class Period, Defendants have had a policy and practice of interfering
22 with Plaintiff and Class Members' ability to take a sick day, failing to provide notice to Plaintiff
23 and Class Members of their right to paid sick leave – much less provide them with paid sick
24 leave, despite Plaintiff and Class Members meeting the various requirements (i.e. length of
25 employment, temporal, geographic, not covered by a collective bargaining agreement, etc.) for
26 paid sick days under both local and state laws. Rather Defendants have required Plaintiff and
27 Class Members to find replacement workers when they are sick and have not compensated them
28 for time taken off due to illness or medical treatment and/or providing care of assistance to a

1 covered family member, in violation of state law.

2 51. As a result of Defendants' unlawfully withholding paid sick days, Plaintiff and
3 Class Members are entitled to recover legal and equitable relief, including reinstatement,
4 backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to
5 exceed an aggregate penalty of \$4,000, as liquidated damages in the amount of \$50 to each
6 employee or person whose rights were violated for each day or portion thereof that the violation
7 occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an
8 employee, the dollar amount of paid sick days withheld from the employee multiplied by three;
9 or \$250, whichever is greater; injunctive relief, interest, and reasonable attorneys' fees and costs
10 pursuant to Labor Code § 248.5

11 52. PAGA provides for enforcement of the penalty provisions of Labor Code § 558.
12 Section 558 authorizes recovery of civil penalties against the employer and persons who acted on
13 behalf of the employer or who have caused the employer to violate § 510, § 512, and/or any
14 provisions regulating hours and days of work in any Wage Order.

15 53. Plaintiff is an aggrieved employee because he was employed by the alleged
16 violators and the alleged violations were committed against him.

17 54. Plaintiff complied with the PAGA notice provision set forth in Labor Code §
18 2699.3(a)(1) by providing written notice through online filing to the Labor and Workforce
19 Development Agency ("LWDA"), and by certified mail to Defendants, on December 16, 2016.
20 Plaintiff's written notice included reference to specific provisions of the Labor Code alleged to
21 have been violated, including the facts and theories to support the alleged violations. Plaintiff's
22 written notice was accompanied by a filing fee of seventy-five dollars (\$75) as required by the
23 statute.

24 55. On December 23, 2016, Plaintiff received notice from the LWDA of its intent not
25 to investigate the Labor Code violations identified in the notice submitted by Plaintiff on
26 December 16, 2016. Pursuant to Labor Code § 2699.3(a)(2), upon receipt of that notice Plaintiff
27 may commence a civil action pursuant to Labor Code § 2699.

28 56. Plaintiff requests civil penalties against Defendants for their violations of the

1 Labor Code, as provided under Labor Code § 558 and § 2699(f), plus attorneys' fees and costs,
2 in amounts to be proven at trial.

3 **SECOND CAUSE OF ACTION**
4 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
5 **(Business and Professions Code §§ 17200, *et seq.*)**
(On Behalf of Plaintiff and the Class Against All Defendants)

6 57. Plaintiff realleges and incorporates the foregoing allegations as though set forth
7 herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

8 58. During the Class Period, through Defendants' acts and omissions alleged herein,
9 Defendants committed and continue to commit unlawful acts that violated and continue to violate
10 Business and Professions Code §§ 17200, *et seq.*

11 59. Defendants' unlawful acts include violations of Labor Code sections 203, 226,
12 246, 351, 510, 512, 558, 1174, and 1194 as well as Wage Order 5, by failing to distribute all
13 gratuities owed no later than the next regular payday; failing to pay overtime compensation;
14 failing to provide a second off-duty meal period when more than 10 hours are worked in a day;
15 failing to permit and authorize off-duty rest periods; interfering with sick days and failing to
16 provide paid sick leave; failing to timely pay all wages due upon discharge, layoff, or resignation;
17 failing to provide accurate wage statements; and failing to keep accurate payroll records; as
18 further alleged herein.

19 60. Defendants' violations of the above alleged statutes and Wage Order
20 independently and separately constitute unlawful business practices within the meaning of
21 Business and Professions Code §§ 17200, *et seq.*

22 61. As a direct and proximate result of the aforementioned acts, Plaintiff and the
23 Class have lost and continue to lose money or property, and suffered and continue to suffer injury
24 in fact. Defendants continue to hold unpaid wages and other monies legally belonging to
25 Plaintiff and the Class and have deprived Plaintiff and the Class of money and property.

26 62. Plaintiff and Class Members are entitled to restitution pursuant to Business and
27 Professions Code §§ 17203 and 17208 for, among other things, all overtime pay, and earned
28 gratuities beginning four (4) years prior to filing of the Complaint to present.

63. Pursuant to Business and Professions Code § 17203, Plaintiff and similarly-situated aggrieved Class Members are entitled to and seek injunctive relief prohibiting Defendants' continuing unlawful and unfair business practices described herein.

64. Pursuant to Code of Civil Procedure section 1021.5, Plaintiff seeks recovery of attorneys' fees, costs and expenses incurred in the filing and prosecution of this action.

**THIRD CAUSE OF ACTION
CONVERSION**

65. Plaintiff realleges and incorporates the foregoing allegations as though set forth herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

66. At all times relevant to this Complaint, Defendants have and continue to have a legal obligation to pay all earned wages and gratuities due to Plaintiff and Class Members, pursuant to Labor Code §§ 351 and 510. Such earned wages and gratuities belonged to Plaintiff and Class Members at the time labor and services were provided to Defendants, and accordingly such wages and gratuities are the property of Plaintiff and Class Members, and not Defendants.

67. Defendants knowingly and intentionally interfered with Plaintiff's and Class Members' ownership of, and right to possess, earned wages and gratuities, by: (1) failing to distribute tips to employees for up to a year; (2) distributing pooled tips to employees who are not in the "chain of service"; (3) failing to distribute all earned tips to employees, by, for example, using tips to pay for business expenses, such as annual company-wide parties; and (4) failing to compensate employees at the proper overtime rate for overtime hours worked.

68. Defendants converted earned wages and owed tips as part of an intentional and deliberate scheme to maximize their profits at the expense of Plaintiff and Class Members. As a proximate result of the conversion by Defendants, Plaintiff and Class Members are entitled to compensation of earned wages and the return of owed gratuities converted by Defendants, in an amount according to proof at the time of trial.

69. Plaintiff and Class Members were injured by Defendants' intentional conversion of such earned wages and owed gratuities. Plaintiff and Class Members are entitled to all monies

1 converted by Defendants, with interest thereon, as well as any and all profits, whether direct or
2 indirect, which Defendants acquired by their unlawful conversion.

3 70. In committing the foregoing acts, Defendants were guilty of oppression, fraud or
4 malice, and, in addition to the actual damages caused thereby, Plaintiff and Class Members are
5 entitled to recover damages for the sake of example and by way of punishing Defendants.

6 71. Plaintiff and Class Members are further entitled to compensation for the time and
7 money expended in pursuit of the converted property.

8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME COMPENSATION**
10 **(Labor Code §§ 510, 558.1, 1194; Wage Order 5)**
(On Behalf of Plaintiff and the Class Against All Defendants)

11 72. Plaintiff realleges and incorporates the foregoing allegations as though set forth
12 herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

13 73. Labor Code § 510 and Wage Order 5 § 3(A) require employers to pay employees
14 one-and-one-half (1-1/2) times the regular hourly rate for all those hours worked in excess of
15 eight (8) hours in one workday and in excess of forty (40) hours in one workweek, and for the
16 first eight (8) hours worked on the seventh consecutive day of work in any one workweek.

17 74. Labor Code § 510 and Wage Order 5 § 3(A) further require employers to pay
18 employees two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours
19 per day and, on the seventh consecutive workday, any work in excess of eight (8) hours.

20 75. Labor Code § 1194 entitles an employee receiving less than the legal overtime
21 compensation to recover in a civil action the unpaid balance of the full amount of all overtime
22 wages owed, including interest thereon, reasonable attorney's fees, and costs of suit.

23 76. Labor Code § 558.1(a) provides for liability for an "other person acting on behalf
24 of an employer[] who violates, or causes to be violated, any provision regulating minimum wages
25 or hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor
26 Code] Section . . . 1194." Labor Code § 558.1(b) provides that an "other person" is "a natural
27 person who is an owner, director, officer, or managing agent" of an employer.

28 77. During the Class Period, Plaintiff and Class Members regularly worked in excess

1 of eight (8) hours a day and forty (40) hours per week. Plaintiff and Class Members also
2 sometimes worked in excess of twelve (12) hours on a single workday and/or seven consecutive
3 days.

4 78. During the Class Period, Defendants have had a policy and practice of willfully
5 and intentionally failing to pay the required overtime rates to Plaintiff and Class Members for
6 overtime hours worked. Specifically, Defendants Yamagami and Hernandez were, at relevant
7 times, owners, directors, officers, or managing agents of Gordo Taqueria and violated or caused
8 to be violated the provisions of Wage Order 5 governing wages or hours and days or work, as
9 well as Labor Code § 1194 and are individually liable for the violations of Wage Order 5 and
10 Labor Code §1194 alleged above.

11 79. As a consequence, Defendants have failed to pay overtime compensation to
12 Plaintiff and the Class for all hours worked, in violation of Labor Code § 510 and Wage Order 5
13 § 3(A).

14 80. As a result of Defendants' conduct, Plaintiff and Class Members have been, and
15 continue to be, deprived of overtime compensation in an amount to be determined at trial, and are
16 entitled to recovery of such amounts, including interest thereon, reasonable attorney's fees, and
17 costs of suit pursuant to Labor Code § 1194.

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE OFF DUTY MEAL PERIODS**
20 **(Labor Code §§ 226.7, = 512, 558.1; Wage Order 5)**
(On Behalf of Plaintiff and the Class Against All Defendants)

21 81. Plaintiff realleges and incorporates the foregoing allegations as though set forth
22 herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

23 82. Labor Code § 512 and Wage Order 5 § 10(A) require that an employer provide a
24 meal period of at least 30 minutes in which each employee is relieved of all duty for every five
25 (5) hours worked. Wage Order 5 § 10(B) requires that an employer must provide a second meal
26 period relieved of all duty of no fewer than 30 minutes for all work days on which an employee
27 works more than ten (10) hours.

83. Labor Code §§ 226.7 and 512 and Wage Order 5 § 10(F) provide that an employee shall receive a premium of one hour pay for each day worked in which his or her employer did not provide the meal period(s) required by Labor Code § 512 and Wage Order 5 § 10(A), (B).

84. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor Code] Section . . . 1194.” Labor Code § 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer. During the Class Period, Defendants have had a policy and practice of failing to provide required meal periods. Specifically, Defendants regularly required employees to work over (10) hours in a workday and did not provide a second meal break as required by California law. Moreover, Defendants Yamagami and Hernandez were, at relevant times, owners, directors, officers, or managing agents of Gordo Taqueria and violated or caused to be violated the provisions of Wage Order 5 § 10, as well as Labor Code §§ 226.7 and 512 and are individually liable for the violations of Wage Order 5 § 10 and Labor Code §§ 226.7 and 512 alleged above.

85. As a result of Defendants' failure to provide Plaintiff and Class Members with compliant meal periods, Plaintiff and Class Members are entitled to one hour of additional pay at the regular rate of compensation for each workday that the compliant meal periods were not provided, attorneys' fees, and interest, pursuant to Labor Code §§ 226.7(b), 218.5, and 512, and Wage Order 5 § 10.

SIXTH CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(Labor Code § 218.5, 226.7, 558.1; Wage Order 5)
(On Behalf of Plaintiff and the Class Against All Defendants)

86. Plaintiff realleges and incorporates the foregoing allegations as though set forth herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

87. Pursuant to Wage Order 5 § 12, “[e]mployees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length. 20 minutes for shifts of more than six hours

1 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker*
2 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029 (citing Wage Order).

3 88. Labor Code § 226.7(b) states: “If an employer fails to provide an employee a meal
4 period or rest period in accordance with an applicable order of the Industrial Welfare
5 Commission, the employer shall pay the employee one additional hour of pay at the employee’s
6 regular rate of compensation for each work day that the meal or rest period is not provided.”

7 89. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf
8 of an employer[] who violates, or causes to be violated, any provision regulating minimum wages
9 or hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor
10 Code] Section . . . 1194.” Labor Code § 558.1(b) provides that an “other person” is “a natural
11 person who is an owner, director, officer, or managing agent” of an employer.

12 90. During the Class Period, Defendants have had a policy and practice of failing to
13 permit and authorize Plaintiffs and Class Members from taking required rest periods.
14 Specifically, Defendants Yamagami and Hernandez were, at relevant times, owners, directors,
15 officers, or managing agents of Gordo Taqueria and violated or caused to be violated the
16 provisions of Wage Order 5 § 12, as well as Labor Code § and 226.7, and are individually liable
17 for the violations of Wage Order 5 § 12 and Labor Code § 226.7, alleged above.

18 91. As result of Defendants’ failure to permit and authorize Plaintiff and Class
19 Members to take required rest periods, Defendants are liable to Plaintiff and Class Members for
20 one hour of additional pay at the regular rate of compensation for each workday that the required
21 rest periods were not provided, attorneys’ fees, penalties, and interest, pursuant to Labor Code §§
22 226.7(b), 218.5, and Wage Order 5.

23 **SEVENTH CAUSE OF ACTION**
24 **WAITING TIME PENALTIES**
25 **(Labor Code §§ 201, 202, 203, 558.1)**

26 **(On Behalf of Plaintiff and the Class [Upon Separation] Against All Defendants)**

27 92. Plaintiff realleges and incorporates the foregoing allegations as though set forth
herein, and Plaintiff alleges as follows a cause of action on behalf of himself and members of the
28 Class who were or are no longer employed by Defendants.

1 93. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
2 due immediately at the time of discharge, or immediately at the time of quitting where 72 hours'
3 notice has been provided; or within 72 hours of resignation made without 72 hours' notice.

4 94. Labor Code § 203 provides that if an employer willfully fails to pay compensation
5 promptly upon separation, as required by §§ 201 or 202, then the employer is liable for waiting
6 time penalties in the form of one day of wages for up to 30 days.

7 95. Labor Code § 558.1(a) provides for liability for an "other person acting on behalf
8 of an employer[] who violates, or causes to be violated, any provision regulating minimum wages
9 or hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor
10 Code] Section . . . 203." Labor Code § 558.1(b) provides that an "other person" is "a natural
11 person who is an owner, director, officer, or managing agent" of an employer.

12 96. Defendants have failed to pay all earned wages to Plaintiff and Class Members
13 during their employment with Defendants. In addition, during the Class Period, Defendants have
14 not paid earned wages to Plaintiff and Class Members upon separation of employment, in
15 violation of Labor Code §§ 201 and 202. Defendants' conduct in this regard has been willful.
16 Specifically, Defendants Yamagami and Hernandez were, at relevant times, owners, directors,
17 officers, or managing agents of Gordo Taqueria and violated or caused to be violated the
18 provisions of Wage Order 5 governing wages or hours and days or work, as well as Labor Code §
19 203 and are individually liable for the violations of Wage Order 5 and Labor Code §203 alleged
20 above.

21 97. As a consequence of Defendants' willful failure to pay wages due to each such
22 employee following separation from employment as required by Labor Code §§ 201 and 202,
23 Plaintiff and Class Members whose employment has ended during the Class Period are entitled to
24 recover from Defendants an additional sum as a penalty, pursuant to Labor Code § 203, equal to
25 a day's wages, for thirty (30) days, plus interest, for each employee who separated from
26 employment with Defendants, in amounts according to proof at trial, attorneys' fees, and costs.

27 //

28 //

1

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Lab. Code §§ 226, 226.3, 558.1)

(On Behalf of Plaintiff and the Class Against All Defendants)

2

3

4 98. Plaintiff realleges and incorporates the foregoing allegations as though set forth
5 herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

6 99. Labor Code § 226(a) requires employers, at the time of each payment of wages, to
7 provide each employee with an accurate wage statement itemizing, among other things, the total
8 hours worked by the employee, the applicable hourly rate, the gross and net wages earned by the
9 employee in the pay period, and the name and address of the legal entity that is the employer.

10 100. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf
11 of an employer[] who violates, or causes to be violated, any provision regulating minimum wages
12 or hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor
13 Code] Section . . . 226.” Labor Code § 558.1(b) provides that an “other person” is “a natural
14 person who is an owner, director, officer, or managing agent” of an employer.

15 101. Plaintiff is informed, believes and alleges thereon, that during the relevant time
16 period, Defendants have knowingly and intentionally failed to provide accurate itemized wage
17 statements to Plaintiff and Class Members in accordance with Labor Code § 226(a). Specifically,
18 Defendants Yamagami and Hernandez were, at relevant times, owners, directors, officers, or
19 managing agents of Gordo Taqueria and violated or caused to be violated the provisions of Labor
20 Code § 226, and are individually liable for the violation of Labor Code § 226, alleged above.

21 102. Plaintiff is informed, believes, and alleges thereon, that the wage statements
22 Defendants provided to Plaintiff and Class Members do not accurately reflect all hours worked or
23 the applicable wage rates paid, and by consequence the gross and net wages earned as well.
24 Further, during the Class Period, the wage statements Defendants provided to Plaintiff and Class
25 Members did not provide the employer address.

26 103. As a result of this failure, Plaintiff and Class Members could not “promptly and
27 easily” determine whether Defendants in fact paid them all wages owed. Furthermore, Plaintiff
28 and Class Members have had to reconstruct time and pay records and perform mathematical

1 computations to determine their actual hours worked and wages owed. Plaintiff and Class
2 Members have therefore suffered injury pursuant to Labor Code § 226(e)(2)(B) as a result of
3 Defendants' knowing and intentional failure to provide accurate itemized wage statements that
4 comply with the requirements of Labor Code § 226(a).

5 104. As a result of Defendants' acts and omissions in violation of Labor Code § 226,
6 Defendants are liable to Plaintiff and Class Members for \$50 for each initial pay period when a
7 violation occurred and \$100 for each subsequent violation up to \$4,000, and reasonable
8 attorneys' fees and costs of this suit pursuant to Labor Code § 226(e).

9 **NINTH CAUSE OF ACTION**
10 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
11 **(Labor Code §§ 1174 and 1174.5; Wage Order 5)**
(On Behalf of Plaintiff and the Class Against All Defendants)

12 105. Plaintiff realleges and incorporates the foregoing allegations as though set forth
13 herein, and Plaintiff alleges as follows a cause of action on behalf of himself and the Class.

14 106. In relevant part, Labor Code § 1174(d) requires employers to keep payroll records
15 showing the hours worked daily and the wages paid to employees. Labor Code § 1174.5 subjects
16 an employer who willfully fails to maintain the accurate and complete records to a civil penalty
17 of five hundred dollars (\$500).

18 107. Section 7(A) of Wage Order 5 requires employers to keep accurate records for
19 each employee in regards to total hours worked in the payroll period, applicable rates of pay, and
20 total wages paid each payroll period, as well as time records showing when employees begin and
21 end each work period, including meal periods, split shift intervals, and total daily hours.

22 108. Defendants have violated Labor Code § 1174(d) by willfully failing to keep
23 required payroll records showing the actual hours worked each day by Plaintiff and Class
24 Members. Specifically, Defendants have failed to display overtime hours worked each day by
25 Plaintiff and Class Members.

26 109. Defendants have violated Wage Order 5 § 7(A) by willfully failing to keep
27 accurate required payroll records for each employee in regards to total hours worked in the
28 payroll period, applicable rates of pay, and total wages paid each payroll period, as well as time

1 records showing when employees begin and end each work period, including meal periods, split
2 shift intervals, and total daily hours worked each day by Plaintiff and Class Members.

3 110. As a result of Defendants' failure to maintain accurate payroll records, Plaintiff
4 and the Class have suffered actual economic harm as they have been precluded from accurately
5 monitoring their number of hours worked and thus prevented from seeking all wages owed,
6 including earned overtime pay.

7 111. Plaintiff and Class Members are entitled to recover a civil penalty of \$500 for
8 Defendants' violation of Labor Code § 1174.5 and request further relief as described below.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself and the above-described Class of
11 similarly-situated persons, pray for relief as follows, jointly and severally from all Defendants:

12 A. Certification of this action as a class action on behalf of the proposed Class,
13 pursuant to Code of Civil Procedure § 382;

14 B. Designation of Plaintiff as Representative of the Class he seeks to represent, and
15 designation of Plaintiff's counsel as Class counsel;

16 C. Provision of Class notice to all Class Members who worked for Defendants in
17 California during the Class Period described above;

18 D. Designation of Defendants as a single integrated business enterprise and/or alter
19 egos of one another, and Defendants Yamagami and Hernandez as individually liable, and
20 therefore jointly liable for all claims and damages;

21 E. An award of unpaid gratuities, overtime compensation, meal and rest premiums,
22 and accrued sick leave owed to Plaintiff and the Class, subject to proof at trial;

23 F. An award of all monies converted by Defendants, with interest thereon, as well as
24 any and all profits, whether direct and indirect, which Defendants acquired by their unlawful
25 conversion, subject to proof at trial;

26 G. An award of waiting time penalties, other penalties for failure to maintain accurate
27 time and pay records and to provide accurate itemized pay statements, and restitution of all
28 amounts owed to Plaintiff and the Class in an amount according to proof;

1 H. An award of punitive damages, subject to proof at trial;

2 I. Restitution of all ill-gotten and/or ill-gained profits, including unpaid gratuities
3 and/or penalties, resulting from Defendants' unfair business practices pursuant to Business and
4 Professions Code §§ 17200, *et seq.*

5 J. Pre-judgment and post-judgment interest, as provided by law;

6 K. Reasonable attorneys' fees and costs of suit, including, but not limited to, expert
7 fees, pursuant to Labor Code §§ 218.5 and 1194; Civil Procedure Code § 1021.5; and any other
8 applicable law;

9 L. An order enjoining the Defendants from engaging in the unlawful conduct
10 complained of herein; and

11 M. Such other equitable relief as the Court may deem just and proper.

12
13 Dated: December 18, 2017

Respectfully Submitted,

14 Carole Vigne
15 Mana Barari
16 Katherine Fiest
17 LEGAL AID AT WORK

18 By:



19 Carole Vigne
20 Attorneys for Plaintiff and the Class

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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY

JOSE MARTINEZ, on behalf of himself and
all others similarly situated,

Case No.: RG16842777

Plaintiffs,

PROOF OF SERVICE

GORDO TAQUERIA, and DOES ONE through TEN inclusive.

Defendants.

Case No.: RG16842777

PROOF OF SERVICE

PROOF OF SERVICE

I, Tishon Smith, declare:

I am a citizen of the United States and am employed by Legal Aid at Work, in San Francisco County. I am over the age of eighteen (18) years and not a party to this action; my business address is 180 Montgomery St, Suite 600 San Francisco, CA 94104

On November 26, 2018, I caused to be served the following document(s): correct copies of:

• **SECOND AMENDED COMPLAINT**

BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated. (COURTS ONLY)

BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

BY FACSIMILE: I caused said document to be transmitted to the telephone number(s) of the addressee(s) designated.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on November 26, 2018.

Paul Smith

Tishon Smith

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